

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. BANK, NATIONAL ASSOCIATION, in its
capacity as Trustee, JOSHUA N. TERRY, AND ACIS
CAPITAL MANAGEMENT, L.P.,

Plaintiffs,

-against-

THE CHARITABLE DONOR ADVISED FUND, L.P.,
CLO HOLDCO LTD., AND NEXPOINT
DIVERSIFIED REAL ESTATE TRUST,

Defendants.

Case No. 1:21-cv-11059 (GHW)

**JOINT STIPULATION AND
[PROPOSED] ORDER
CONCERNING COUNTERCLAIMS
AGAINST HIGHLAND CLO
FUNDING, LTD.**

WHEREAS, Charitable DAF Fund, LP a/k/a The Charitable Donor Advised Fund, L.P. (“DAF”) and CLO HoldCo, Ltd. (“CLOH, and with the DAF, the “CLOH Parties”) served the Amended Answer and Counterclaims [ECF No. 77] (the “Counterclaims”) against Highland CLO Funding, Ltd. (“HCLOF”) and other counterclaim defendants on March 30, 2023;

WHEREAS, HCLOF filed a pre-motion letter requesting a pre-motion conference in order to file a motion to dismiss the Counterclaims [ECF No. 132];

WHEREAS, the CLOH Parties intend to file a motion for leave to further amend their Counterclaims (“Motion to Amend”);

WHEREAS, for the sake of efficiency, the parties agree to stay HCLOF’s obligation to respond to the Counterclaims until after the Court rules on the CLOH Parties’ Motion to Amend;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the parties, that:

1. HCLOF’s request for a pre-motion conference and the CLOH Parties’ obligation to respond to HCLOF’s request are hereby stayed, subject to and upon the Court’s approval of this joint stipulation, which the parties to this stipulation respectfully request, pending the Court’s ruling on the CLOH Parties’ Motion to Amend;

2. If the Court issues an order denying the CLOH Parties' Motion to Amend, the CLOH Parties will respond to HCLOF's request for a pre-motion conference within **five (5) days** from the date of that order;

3. If the Court issues an order granting the CLOH Parties' Motion to Amend, HCLOF will respond to the amended counterclaims within **fourteen (14) days** from the date the CLOH Parties file and serve such amended counterclaims on HCLOF through HCLOF's counsel of record in this lawsuit;

4. Nothing in this stipulation shall be construed as a waiver of any of the parties' rights or defenses, including without limitation HCLOF's objection to lack of personal jurisdiction;

5. This stipulation may be executed in counterparts, and electronic signatures shall have the same effect as the originals.

Dated: June 12, 2023
New York, New York

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Dated: June ____, 2023
New York, New York

GREGORY H. WOODS
United States District Judge